

TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

NOTICE IS HEREBY GIVEN

The Commissioner of Corporations ("Commissioner") proposes to amend regulations under the FRANCHISE INVESTMENT LAW relating to the notice of exemption to be used in claiming the new exemption from registration for the addition of a new product or service line to an existing business of a prospective franchisee.

PUBLIC COMMENTS

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

Notice is also given that any interested person may present statements or arguments relevant to the proposed action by a written communication addressed to, and received by, the Department's contact person on or before 5 p.m., June 30, 2000. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The Department regulates the offer and sale of franchises under the Franchise Investment Law ("FIL"). Under the FIL, it is unlawful to offer or sell any franchise in this state unless the offer has been registered with the Commissioner or is exempt from registration. The FIL provides several exemptions from registration.

Senate Bill 459 (Chapter 325, Statutes 1999), which became effective on January 1, 2000, added Section 31108 of the Corporations Code under the FIL to provide an exemption from the registration requirements for an offer or sale of a franchise in this state, if the franchise involves adding a new product or service line to an existing business of a prospective franchisee and the following requirements are met:

1. The prospective franchisee (or an existing officer, director, or managing agent of the prospective franchisee who has held that position for at least the last 24 months) has been engaged in a business offering products or services substantially similar or related to those to be offered by the franchised business for at least the last 24 months.
2. The new product or service is substantially similar or related to the product or service being offered by the prospective franchisee's existing business.
3. The franchised business is to be operated from the same business location as the prospective franchisee's existing business.
4. The parties anticipated, in good faith, that sales resulting from the franchised business will not represent more than 20% of the total sales in dollar volume of the franchisee on an annual basis.

5. The prospective franchisee is not controlled by the franchisor.

In order for a transaction to qualify for the claim of exemption pursuant to Corporations Code Section 31108, a notice of exemption must be filed by the franchisor with the Commissioner (i.e., with the Department) prior to and within the same calendar year as the sale of the franchise. The filing fee, as prescribed in Corporations Code Section 31500(f), must accompany the notice.

Rule 310.101 sets forth the notice of exemption to be used in claiming the exemption under either Section 31101 or 31104 of the Corporations Code. The Commissioner proposes to amend Rule 310.101 to also require the use of this notice of exemption form for purposes of the new exemption under Corporations Code Section 31108.

Subsection (a) of Rule 310.101 sets forth the form of the notice of exemption. The Commissioner proposes to amend this subsection to include the notice of exemption required under Corporations Code Section 31108.

Subsection (b) sets forth the instructions for the notice. The Commissioner proposes to amend this subsection to (1) make conforming changes resulting from the addition of the exemption under Corporations Code Section 31108 to the notice, (2) update the year reference given in the example, (3) clarify that the "material modification" exception applies only to the exemption under Section 31101 and 31104 of the Corporations Code, and (4) make minor, nonsubstantive changes.

AUTHORITY

Section 31502, Corporations Code.

REFERENCE

Sections 31101, 31104, 31108, and 31500, Corporations Code.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation(s). A request for a copy of any modified regulation(s) should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulation(s) for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION(S)

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document OP 18/99-B. A statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document OP 18/99-C. As required by the Administrative Procedure Act, the Office of Policy maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Corporations, Office of Policy, 980 Ninth Street, Suite 500, Sacramento, California.

ALTERNATIVES CONSIDERED

The Department must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the above action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

- Cost or Savings to any State Agency: None.
- Direct or Indirect Costs or Savings in Federal Funding to the State: None.
- Cost to Local Agencies and School Districts Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
- No other nondiscretionary cost or savings are imposed on local agencies.
- Costs to Private Persons or Businesses Directly Affected: Insignificant or none.
- Effect on Housing Costs: None.

DETERMINATIONS

The Commissioner has determined that the proposed regulatory action:

- Affects small businesses. The express terms of the proposed action written in plain English are available from the agency contact person named in this notice. Copies may also be obtained from any office of the Department upon request. Request Document OP 18/99-B.
- Does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within the State of California; (3) the expansion of businesses currently doing business within the State of California.

CONTACT PERSON

Comments or inquiries concerning these proposed regulation changes may be directed to GERARDO PARTIDA, Senior Corporations Counsel. Department of Corporations, 980 Ninth Street, Suite 500, Sacramento, California 95814. (916) 322-3553.

Dated: April 25, 2000
Sacramento, California

WILLIAM KENEFICK
Acting Commissioner